

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>CAROLYN THOMAS</b>	:	DETERMINATION
	:	DTA NO. 818918
for Redetermination of a Deficiency or for Refund of New	:	
York State Personal Income Tax under Article 22 of the	:	
Tax Law and New York City Personal Income Tax	:	
pursuant to the Administrative Code of the City of New	:	
York for the Year 1995.	:	

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Petitioner, Carolyn Thomas, 1017 Faile Street, Apartment 1, Bronx, New York 10459, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under Article 22 of the Tax Law and New York City personal income tax pursuant to the Administrative Code of the City of New York for the year 1995.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 1740 Broadway, New York, New York on February 27, 2003 at 10:45 A.M. Petitioner appeared by Brian S. Carr, CPA. The Division of Taxation appeared by Barbara G. Billet, Esq. (Susan Parker).

Since neither party elected to reserve time for the submission of post hearing briefs, the three-month period for the issuance of this determination began as of the date the hearing was held.

***ISSUE***

Whether the Division of Taxation properly denied petitioner's claim for refund for the year 1995 on the ground that the claim was filed after the statute of limitations for refund had expired.

***FINDINGS OF FACT***

1. Petitioner herein, Carolyn Thomas, filed a timely New York State and City resident income tax return for the year 1995 reporting thereon New York adjusted gross income of \$19,138.00, which amount consisted entirely of wage income petitioner received from the City of New York. The return computed a New York State and City tax due of \$690.00 and this amount was paid by New York State (\$706.00) and City (\$376.00) tax withheld from wages. The return requested that the overpayment of \$476.00 (\$1,082.00 - \$690.00) be refunded and the Division of Taxation ("Division") did in fact issue a refund to petitioner in the sum of \$476.00.

2. On December 6, 1999, the City of New York issued to petitioner a Form W-2c, Corrected Wage and Tax Statement, indicating that previously reported wage income of \$19,137.94 was incorrect and that the corrected figure was \$12,918.65, a decrease of \$6,219.29. On March 30, 2000, petitioner filed with the Division an amended New York State and City resident income tax return for 1995 reducing reported wage income by \$6,219.29 as reflected on the Corrected Wage and Tax Statement issued by the City of New York. The amended return sought a refund of \$589.00.

3. By Notice of Disallowance dated November 3, 2000, the Division denied petitioner's claim for refund in full on the basis that "the deadline for filing for a refund or credit expired three years from the date the return was due."

4. On or about February 2, 1995, petitioner, while employed by the City of New York, suffered a work related injury. As a result of the injury petitioner filed a claim with the

Workers' Compensation Board ("WCB") seeking certain benefits. The WCB held a hearing on May 17, 1999 and, pursuant to a decision filed on August 20, 1999, the following determination was made:

The claimant has a 10.00% schedule loss of use of the Left Hand entitling claimant to 32.0 weeks of benefits. Also the claimant is entitled to an additional 0.2 weeks of benefit due to a healing period which took longer than normally expected. The award is to be paid with the City of New York taking credit for lost time benefits already paid.

The decision of the WCB determined that petitioner was entitled to a temporary total disability award of \$8,669.21 for the period February 3, 1995 to September 18, 1995, less payments already made.

5. As noted earlier, the corrected Form W-2c issued by the City of New York on December 6, 1999 reduced petitioner's reported wage income by \$6,219.65, notwithstanding the fact that the WCB decision allowed a temporary total disability award of \$8,669.21. The record herein does not contain an explanation for the discrepancy between the amount of reduced wage income as reported on Form W-2c and the amount of the temporary total disability award granted by the WBC.

### ***CONCLUSIONS OF LAW***

A. As relevant to this proceeding, Tax Law § 687, entitled "Limitations on credit or refund" provides as follows:

(a) General. --- Claim for credit or refund of an overpayment of income tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later. . . . If the claim is filed within the three year period, the amount of the credit or refund shall not exceed the portion of the tax paid within the three years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. . . .

For the year at issue petitioner's only payment of taxes was by tax withheld from wages. Pursuant to Tax Law § 687(i) income taxes withheld from wages are deemed to have been paid by a taxpayer on April 15<sup>th</sup> of the following year, in this case April 15, 1996. Accordingly, in order to be entitled to a refund of any of the tax withheld from wages paid in 1995, petitioner would be required, pursuant to Tax Law § 687(a), to file a claim for such refund by April 15, 1999.

B. Petitioner concedes that her claim for refund filed on March 30, 2000 was not timely filed pursuant to Tax Law § 687(a); however, she believes that the refund should nonetheless be granted due to extenuating circumstances. Specifically, petitioner faults the City of New York for its failure to properly report her wages on the wage and tax statement initially issued to her in January of 1996 and also for its failure to issue the corrected wage and tax statement in a more timely manner. Petitioner asserts that by not issuing the corrected wage and tax statement until December 6, 1999, a date beyond the general three-year statute of limitations for refund with respect to the 1995 tax year, the City of New York essentially denied her the opportunity to file a timely claim for refund for said year.

C. It is unfortunate that petitioner's 1995 return was prepared using the wage income figure of \$19,137.94 as shown on the original wage and tax statement supplied to her by the City of New York since this figure was erroneous. Further compounding the problem herein was the fact that a corrected wage and tax statement was not issued until December 6, 1999, a date beyond the general three-year statute of limitations for refund for the 1995 tax year. While I sympathize with petitioner's circumstances, there is simply no provision in the Tax Law which permits or allows the statute of limitations for refund provided for in Tax Law § 687(a) to be extended, regardless of the circumstances. In fact, Tax Law § 687(e) specifically provides that

no credit or refund can be allowed “after the expiration of the applicable period of limitations specified in this article, unless a claim for credit or refund is filed by the taxpayer within such period.” Tax Law § 687(e) further provides that any later credit or refund is void and erroneous and that no period of limitations specified in any other law is applicable to the recovery of any taxes imposed by Article 22.

D. The petition of Carolyn Thomas is denied and the Notice of Disallowance dated November 3, 2000 is hereby sustained.

DATED: Troy, New York  
April 3, 2003

/s/ James Hoefer  
PRESIDING OFFICER